

SF 2306 (LSB 5105SV (~~2~~6) 86)

ESTABLISHING THE FACILITATING BUSINESS RAPID RESPONSE TO STATE-DECLARED DISASTERS
ACT, AND INCLUDING EFFECTIVE DATE AND RETROACTIVE APPLICABILITY PROVISIONS.

~~SENATE FILE 2306~~

~~BY COMMITTEE ON WAYS AND MEANS~~

~~(SUCCESSOR TO SSB 3115)~~

~~(COMPANION TO HF 2440 BY COMMITTEE ON WAYS AND MEANS)~~

~~A BILL FOR~~

~~An Act establishing the facilitating business rapid response to state declared
disasters Act, and including effective date and retroactive applicability
provisions.~~

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 29C.1, subsection 3, Code 2016, is amended to read as follows:

3. To provide for the rendering of mutual aid among the political subdivisions of the state and with other states, ~~and~~ to cooperate with the federal government with respect to

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the carrying out of emergency management functions, and to ensure the state government and its departments and agencies facilitate the rapid response of businesses and workers in the state and other states to a disaster.

Sec. 2. NEW SECTION. 29C.24 Facilitating business rapid response to state-declared disasters Act.

1. *Title.* This section may be cited as the "*Facilitating Business Rapid Response to State-Declared Disasters Act*".

2. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. (1) "*Critical infrastructure*" means real and personal property and equipment owned or used by any of the following networks or systems, including related support facilities, which network or system provides service to more than one customer or person:

- (a) Communication and video networks.
- (b) Electric generation, transmission, and distribution systems.
- (c) Gas distribution systems.
- (d) Water and wastewater pipeline systems.

(2) "*Critical infrastructure*" includes but is not limited to buildings, structures, offices, lines, poles, pipes, and equipment.

b. "*Declared state disaster or emergency*" means a disaster or emergency event that meets at least one of the following conditions:

(1) A disaster emergency proclamation has been issued by the governor pursuant to section 29C.6 in relation to the event.

(2) A presidential declaration of a major disaster has been issued in relation to the event.

c. "*Disaster or emergency-related work*" means repairing, renovating, installing, building, or rendering services or other business activities, that relate to critical infrastructure that has been damaged, impaired, or destroyed by a declared state disaster or emergency.

d. "*Disaster response period*" means, with respect to each declared state disaster or emergency, a period of time that begins ten calendar days prior to the day the governor proclaims a disaster emergency or the president declares a major disaster, whichever occurs first, and extends for a period of sixty calendar days after the end of the declared state disaster or emergency.

e. (1) "*Out-of-state business*" means a business entity that meets all of the following requirements:

(a) The business entity is requested to perform disaster or emergency-related work in the state by a registered business or by the state or a political subdivision of the state.

(b) Except for disaster and emergency-related work, the business entity has no presence in the state and conducts no business in the state.

(c) Except for disaster and emergency-related work, the business entity had no registrations, tax filings, or nexus in the state for the tax year immediately preceding the year in which the relevant declared state disaster or emergency occurs.

(2) "*Out-of-state business*" may include a business entity that is affiliated with a registered business solely through common ownership.

f. "*Out-of-state employee*" means an employee who does not work in this state except to perform disaster or emergency-related work during a disaster response period.

g. "*Registered business*" means a business entity that is registered to do business in the state prior to the declared state disaster or emergency.

3. *Business and employee status during disaster response period.*

a. Notwithstanding any other provision of law to the contrary, an out-of-state business that conducts operations within the state solely for the purpose of performing disaster or emergency-related work during a disaster response period shall not be considered to have established a level of presence that would subject

the out-of-state business to any of the following:

(1) The requirement to complete or obtain any state or local registration, license, or similar authorization as a condition of doing business in this state or engaging in an occupation in this state, or to pay any related fee, including but not limited to the requirement to register with the secretary of state or a political subdivision. This subparagraph (1) does not apply to the notification ~~requirement~~ and insurance verification requirements in subsection 5.

(2) (a) The requirement to collect and remit any tax imposed upon another person or file any related tax return or obtain any related tax permit. This subparagraph division (a) does not apply to an out-of-state business for the collection and remittance of sales and use taxes under chapter 423 if the out-of-state business is registered voluntarily as a seller under the streamlined sales and use tax agreement.

(b) Subparagraph division (a) shall not be construed to protect or otherwise exempt any person liable for the payment of a tax, other than the out-of-state business, from the responsibility to pay such tax.

(3) The imposition of income taxes under chapter 422, divisions II and III, including the requirement to file tax returns under sections 422.13 through 422.15 or 422.36, as applicable, and including the requirement to withhold and remit income tax from out-of-state employees under section 422.16. In addition, the performance of disaster or emergency-related work during a disaster response period by an out-of-state business or out-of-state employee shall not require an out-of-state business to be included in a consolidated return under section 422.37, and shall not increase the amount of net income of the out-of-state business allocated and apportioned to the state under sections 422.8 or 422.33, as applicable.

(4) The employment security requirements under chapter 96, including but not limited to the payment of employer contributions under section 96.7.

(5) The use tax under chapter 423, subchapter III, or the equipment tax under chapter 423D, on tangible personal property or equipment purchased outside the state and brought into the state to aid in the performance of disaster or emergency-related work during a disaster response period if such tangible personal property or equipment does not remain in the state after the conclusion of the disaster response period.

(6) The assessment of property taxes by the department of revenue under sections 428.24 through 428.26, 428.28, and 428.29, or chapters 433, 434, 435, and 437 through 438, or by a local assessor under another provision of law, on property brought into the state to aid in the performance of disaster or emergency-related work during a disaster period if such property does not remain in the state after the conclusion of the disaster response period.

b. Notwithstanding any other provision of law to the contrary, the performance of disaster or emergency-related work during a disaster response period by an out-of-state employee shall not be used as the basis to determine that the out-of-state employee has established residency or a level of presence that would subject the out-of-state employee to any of the following:

(1) The requirement to complete or obtain any state or local registration, license, or similar authorization as a condition of doing business in this state or engaging in an occupation in this state, or to pay any related fee, including but not limited to the requirement to register with the secretary of state or a political subdivision.

(2) The imposition of income taxes under chapter 422, division II, including the requirement to file tax returns under section 422.13 and the requirement to be subject to withholding of income tax under section 422.16. In addition, the performance of disaster or emergency-related work during a disaster response period by an out-of-state employee shall not increase the amount of net income of the out-of-state employee allocated and apportioned to the state under section 422.8.

(3) The use tax under chapter 423, subchapter III, or the equipment tax under chapter 423D, on tangible personal property or equipment purchased outside the

state and used in the state to aid in the performance of disaster or emergency-related work during a disaster response period if such tangible personal property or equipment does not remain in the state after the conclusion of the disaster response period.

c. During a disaster response period, an out-of-state business or an out-of-state employee shall be subject to all taxes and fees not included in paragraphs "a" and "b", and this subsection shall not be construed to provide protection or exemption during a disaster response period or any other period from taxes or taxable events not included in paragraphs "a" and "b".

4. *Business and employee status after a disaster response period.* An out-of-state business or out-of-state employee that remains in the state after the conclusion of the disaster response period for which the disaster or emergency-related work was performed shall be fully subject to the state's standards for establishing presence, residency, or doing business as otherwise provided by law, and shall be responsible for any resulting taxes, fees, licensing, registration, filing, or other requirements.

5. ~~Notification of out-of-state business~~ and insurance verification during disaster response period.

a. An out-of-state business that enters the state to perform disaster and emergency-related work during a disaster response period shall provide notification to the secretary of state, which notification shall contain all the following information related to the out-of-state business:

- (1) Name.
- (2) State of domicile.
- (3) Principal business address.
- (4) Federal employer identification number.
- (5) The date the out-of-state business entered the state.
- (6) Contact information.

(7) A statement that the out-of-state business is in the state for the purpose of responding to a declared state disaster or emergency.

b. For an out-of-state business that enters this state to perform disaster and emergency-related work during a disaster response period as an affiliate of a registered business, the registered business shall provide, on behalf of the affiliate out-of-state business, the notification required in paragraph "a", which notification shall also include contact information for the registered business.

c. Upon request of the secretary of state, an out-of-state business that enters the state to perform disaster and emergency-related work during a disaster response period shall provide proof of workers' compensation insurance coverage and liability insurance coverage, if any. Such proof shall be provided within ten days of the request.

d. The secretary of state shall transmit notification and insurance verification information to the department, department of revenue, and other appropriate state and local government agencies and officials.

6. *Powers and duties not created.* This Act shall not be construed to place any new mandates or duties upon a local emergency management commission or create any new authority or power for a local emergency management commission not already expressly granted in another provision of this chapter.

7. *Rules.* The department, the secretary of state, and the department of revenue shall each adopt rules pursuant to chapter 17A to jointly administer this section.

Sec. 3. Section 422.8, subsection 2, paragraph a, Code 2016, is amended to read as follows:

a. Nonresident's net income allocated to Iowa is the net income, or portion of net income, which is derived from a business, trade, profession, or occupation carried on within this state or income from any property, trust, estate, or other source within Iowa. However, income derived from a business, trade, profession, or occupation carried on within this state and income from any property, trust,

estate, or other source within Iowa shall not include distributions from pensions, including defined benefit or defined contribution plans, annuities, individual retirement accounts, and deferred compensation plans or any earnings attributable thereto so long as the distribution is directly related to an individual's documented retirement and received while the individual is a nonresident of this state. If a business, trade, profession, or occupation is carried on partly within and partly without the state, only the portion of the net income which is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state is allocated to Iowa for purposes of section 422.5, subsection 1, paragraph "j", and section 422.13 and income from any property, trust, estate, or other source partly within and partly without the state is allocated to Iowa in the same manner, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends are allocated to Iowa only to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state. Net income described in section 29C.24, subsection 3, paragraph "a", subparagraph (3), and paragraph "b", subparagraph (2), shall not be allocated and apportioned to the state, as provided in section 29C.24.

Sec. 4. Section 422.13, Code 2016, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding subsections 1 through 5 and sections 422.14 and 422.15, a return is not required by a taxpayer as provided in section 29C.24.

Sec. 5. Section 422.16, subsection 1, Code 2016, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. Individuals described in section 29C.24 are not subject to withholding, as provided in that section.

Sec. 6. Section 422.33, subsection 2, paragraph a, subparagraph (2), Code 2016, is amended by adding the following new subparagraph division:

NEW SUBPARAGRAPH DIVISION. (Of) Notwithstanding subparagraph division (c), income described in section 29C.24, subsection 3, paragraph "a", subparagraph (3), shall not be allocated and apportioned to the state, as provided in section 29C.24.

Sec. 7. Section 422.36, Code 2016, is amended by adding the following new subsection:

NEW SUBSECTION. 7. Notwithstanding subsection 1, a return is not required by a taxpayer as provided in section 29C.24.

Sec. 8. Section 422.37, subsection 2, Code 2016, is amended to read as follows:

2. All members of the affiliated group shall join in the filing of an Iowa consolidated return to the extent they are subject to the tax imposed by section 422.33, except as otherwise provided in section 29C.24.

Sec. 9. Section 423.6, Code 2016, is amended by adding the following new subsection:

NEW SUBSECTION. 17. Tangible personal property exempt from the use tax as provided in section 29C.24.

Sec. 10. Section 423.33, subsection 1, Code 2016, is amended to read as follows:

1. *Liability of purchaser for sales tax.* If a purchaser fails to pay sales tax to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 apply to the purchaser. For failure to pay, the retailer and purchaser are liable, unless the circumstances described in section 29C.24, subsection 3, paragraph "a", subparagraph (2), section 421.60, subsection 2, paragraph "m", section 423.34A, or section 423.45, subsection 4, paragraph "b" or "e", or subsection 5, paragraph "c" or "e", are applicable.

Sec. 11. NEW SECTION. **423.58 Collection, permit, and tax return exemption for certain out-of-state businesses.**

Notwithstanding sections 423.14, 423.29, 423.31, 423.32, and 423.36, a person

meeting the requirements of section 29C.24 is not required to obtain a sales or use tax permit, collect and remit sales and use tax, or make and file applicable sales or use tax returns, as provided in section 29C.24, subsection 3, paragraph "a", subparagraph (2).

Sec. 12. Section 423D.3, Code 2016, is amended to read as follows:

423D.3 Exemption.

There is exempted from tax imposed by this chapter the following:

1. The sales price on the lease or rental of equipment to contractors for direct and primary use in construction is exempt from the tax imposed by this chapter.
2. The sales price or purchase price of equipment exempt from the equipment tax as provided in section 29C.24.

Sec. 13. Section 427.1, Code 2016, is amended by adding the following new subsection:

NEW SUBSECTION. 41. Property described in and meeting the requirements of section 29C.24, subsection 3, paragraph "a", subparagraph (6).

Sec. 14. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Sec. 15. RETROACTIVE APPLICABILITY. The following provision or provisions of this Act apply retroactively to January 1, 2016, for tax years beginning on or after that date:

1. The section of this Act amending section 422.8.
2. The section of this Act amending section 422.13.
3. The section of this Act amending section 422.16.
4. The section of this Act amending section 422.33.
5. The section of this Act amending section 422.36.
6. The section of this Act amending section 422.37.

EXPLANATION

~~The inclusion of this explanation does not constitute agreement with~~

PAM JOCHUM

President of the Senate

LINDA UPMEYER

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2306, Eighty-sixth General Assembly.

MICHAEL E. MARSHALL

Secretary of the Senate

Approved _____, 2016

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TERRY E. BRANSTAD

~~the explanation's substance by the members of the general assembly.~~

~~This bill establishes the "Facilitating Business Rapid Response to State Declared Disasters Act" and provides definitions. The bill also amends the statement of policy in Code chapter 29C (Emergency Management and Security).~~

~~The bill provides that notwithstanding any law to the contrary, an out of state business or an out of state employee that performs disaster and emergency related work during a disaster response period will be protected from, and shall not be subject to, certain taxes, fees, licensing, registration, filing, and other requirements, as specified in the bill.~~

~~"Disaster response period" is defined as a period of time beginning 10 days before the governor proclaims a state disaster or emergency or the president declares a major disaster in the state, and ends 60 days after the end of the declared state disaster or emergency. "Disaster and emergency-related work" is defined to include a variety of work on critical infrastructure damaged, impaired, or destroyed by the declared state disaster or emergency. "Critical infrastructure" is defined to include property and equipment owned or used by a communication and video network; electric generation, transmission, and distribution system; gas distribution system; water and wastewater pipeline system; or a related support facility of those networks or systems. The network or system must provide service to more than one customer or person. "Critical infrastructure" includes but is not limited to buildings, structures, offices, lines, poles, pipes, and equipment.~~

~~OUT-OF-STATE BUSINESSES. The bill defines "out of state business" and provides that an out of state business performing disaster and emergency-related work during a disaster response period shall not be considered to have established a level of presence that would subject it to the following:~~

~~1. The requirement to obtain any state or local business or registration, license, or similar authorization as a condition of doing business or engaging in an occupation in this state, or pay any related fee.~~

~~2. The requirement to collect and remit any tax imposed upon another person, or file any related tax return or obtain any related tax permit, except for the collection of sales and use tax by an out of state business registered voluntarily as a seller under the streamlined sales and use tax agreement.~~

~~3. The requirement to pay the individual or corporate income tax, including the requirement to file a tax return or be included in a consolidated tax return, withhold and remit income tax from out of state employees, or increase the amount of the out of state business's net income allocated and apportioned to Iowa as a result of the disaster and emergency related work.~~

~~4. The requirement to be subject to the employment security requirements of Code chapter 96, including but not limited to the requirement to make employer contributions.~~

~~5. For tangible personal property and equipment purchased outside of Iowa and brought into the state to aid in the performance of disaster or emergency-related work, the requirement to pay use tax or equipment tax on the property, or have the property assessed for property tax purposes, provided the property does not remain in the state after the disaster response period.~~

~~Out of state businesses that enter the state to perform disaster and emergency-related work during a disaster response period are required to provide a notification containing various information to the secretary of state. If the out of state business enters the state as an affiliate of a registered business, the registered business must provide the required notification on behalf of the out of state business. "Registered business" is defined in the bill. The secretary~~

~~of state is required to share the notification information with various state and local agencies and officials as specified in the bill.~~

~~—OUT-OF-STATE EMPLOYEES. The bill defines "out-of-state employee" and provides that the performance of disaster or emergency-related work during a disaster response period by an out-of-state employee shall not be used as the basis to determine the out-of-state employee has established residency or a level of presence that would subject the out-of-state employee to the following:~~

~~—1. The requirement to obtain any state or local registration, license, or similar authorization as a condition of doing business or engaging in an occupation in this state, or pay any related fee.~~

~~—2. The requirement to pay the individual income tax or file a tax return, be subject to income tax withholding, or increase the amount of the out-of-state employee's net income allocated and apportioned to Iowa as a result of the disaster and emergency-related work.~~

~~—3. The requirement to pay use tax or equipment tax on tangible personal property and equipment purchased outside of Iowa and brought into the state to aid in the performance of disaster or emergency-related work, provided the property does not remain in the state after the disaster response period.~~

~~The bill provides that out-of-state businesses and out-of-state employees shall be subject to all taxes and fees not specifically included in the bill, and provides that out-of-state businesses and out-of-state employees that remain in Iowa after the conclusion of the disaster response period shall be fully subject to Iowa's standards for establishing presence, residency, or doing business as otherwise provided by law, and shall be responsible for any resulting taxes, fees, licensing, registration, filing, or other requirements.~~

~~The bill includes cross references to the tax exclusions and exemptions created in the bill in several sections of the Code relating to the individual and corporate income tax (Code chapter 422), the sales and use tax (Code chapter 423), the equipment tax (Code chapter 423D), and the property tax (Code chapter 427). The cross references to the individual and corporate income tax in Code chapter 422 are retroactive to January 1, 2016, for tax years beginning on or after that date.~~

~~The bill provides that the "Facilitating Business Rapid Response to State-Declared Disasters Act" shall not be construed to place any new mandates or duties upon a local emergency management commission or create any new authority or power for a local emergency management commission not already expressly provided in another provision of Code chapter 29C (Emergency Management and Security).~~

~~The bill takes effect upon enactment.~~

Governor

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